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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.125 of 1998
Date of decision: 07.11.2006

The Commissioner of Income-tax, Panchkula

-----Applicant

Vs.

M/s Shiv Shanker Rice Mills, Distt. Yamuna Nagar

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr.Yogesh Putney, Advocate.

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh , arising out of its order dated 6.8.1997 in I.T.A. Nos.608 & 609/Chandi/1994 in respect of assessment year 1989-90 & 1990-91:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the view taken by the CIT (A) to cancel the penalty u/s 271B on the ground that the same was not leviable in a case where the audit report u/s 44AB had been obtained on or before the specified date but the same had been filed alongwith a return u/s 139(4) and not u/s 139(1) and no notice being issued u/s 142(1) asking the assessee to file the return of income?"

We find that the issue stands covered against the revenue by the judgment of this Court in ***Income-Tax Officer*** ***v.*** ***Kaysons India*** (2000) 246 ITR 489. After considering the relevant provisions, this Court observed at page 492:-

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> "It is, therefore, evident that the default or failure to file the return along with the audit report on or before the specified date is not hit by the provisions of section 271B. It is not the case of the Revenue that the assessee has failed to get the accounts audited or has failed to obtain the report of such audit in terms of section 44AB before the specified date. It is also evident that no return had been filed either under sub-section (1) of section 139 or in response to any notice under clause (i) of sub-section (1) of section 142 and as such there could possibly be no default of not furnishing the audit report along with such a non-existent return. The return under sub-section (1) of section 139 in this case could be filed up to November 30, 1990. However, the assessee had filed the return on December 31, 1990, which was a return filed under sub-section (4) of section 139 and this return was duly accompanied by the audit report obtained by the assessee in accordance with the provisions of section 44AB. Thus, according to us, the default for which penalty had been levied was not covered by the provisions of section 271B and the Commissioner of Income-tax (Appeals and the Tribunal were justified in holding that no penalty was leviable."

Accordingly, the question is answered against the revenue and in favour of the assessee.

(Adarsh Kumar Goel)
Judge

November 7,2006 **(Rajesh Bindal)**
Pka **Judge**